

AGREEMENT FOR SERVICES

BETWEEN

ELDER CARE OF WISCONSIN, INC.

AND

<SUBCONTRACTOR>

THIS AGREEMENT is made by and between Elder Care of Wisconsin, Inc. ("Elder Care"), a Wisconsin not-for-profit corporation, and _____ ("Subcontractor").

WHEREAS, Elder Care is a not-for-profit tax exempt corporation that operates Elder Care Partnership ("Partnership"), an alternative Medicare and Wisconsin Medicaid Program demonstration program for the development of a new model of comprehensive health and long-term services for the frail elderly; and,

WHEREAS, Subcontractor desires to enter into an agreement with Elder Care to provide services as described under this Agreement;

NOW THEREFORE, it is agreed as follows:

I. DEFINITIONS

- 8.1 Agreement. Shall mean this Agreement for Services and all exhibits, attachments, schedules and amendments hereto.
- 8.2 Covered Services. Shall include but not be limited to all Medicare and Medicaid Covered Services and those services as required by the *Medical Assistance Waiver (Long-Term Support Community Options Program)*, s. 46.27(11) Wisconsin Statutes.
- 8.3 Emergency. Shall mean a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment of bodily functions, or serious dysfunction of any bodily organ or part. A psychiatric emergency involves a significant risk of serious harm to oneself or others. A substance abuse or AODA emergency exists if there is significant risk of serious harm to oneself or others, or there is likelihood of return to substance abuse without immediate treatment. Emergency dental care is defined as an immediate service needed to relieve the patient from pain, an acute infection, swelling, trismus, fever, or trauma.

- 8.4 Interdisciplinary Team. Shall mean the team that includes the Participant, Partnership Physician, Elder Care Nurse Practitioner, Elder Care Registered Nurse, Elder Care Social Worker, and other health care providers.
- 8.5 Medicaid. Shall mean the Wisconsin Medicaid Program (“WMP”) operated by the Wisconsin Department of Health and Family Services under Title XIX of the Federal Social Security Act, Ch. 49 of the Wisconsin Statutes and related State and Federal rules and regulations.
- 8.6 Medicaid Covered Services. Shall mean those services reimbursed for by the Wisconsin Department of Health and Family Services (“DHFS”) for people eligible for Medicaid benefits under §49.46(2) of the Wisconsin Statutes and Chapter HFS 107 of the Wisconsin Administrative Code.
- 8.7 Medicare. Shall mean the health insurance program operated by the U.S. Department of Health and Human Services under 42 CFR subchapter B and 1965 Act, Title I of Public Law 89-97 as amended.
- 8.8 Medicare Covered Services. Shall mean those services reimbursed for by the Center for Medicare/Medicaid Services (“CMS”) for people eligible for Medicare benefits.
- 8.9 Participant. Shall mean a person who is enrolled in Elder Care Partnership and is eligible to have Covered Services paid for on his or her behalf by Elder Care. To be eligible for Partnership, a person must be 55+ years old, a resident of Dane County, eligible for Medicaid or meet certain income and asset level guidelines, and certified at nursing home level of care by the WMP.

II. SERVICES

Subject to the terms and conditions herein and subject to the request of Elder Care, Subcontractor:

- 2.4 Will provide services to Participants as authorized by the Interdisciplinary Team. Subcontractor will provide services to Participants in the same manner as these services are provided to other Subcontractor clients. Subcontractor will cooperate with Elder Care to assure that eligible Participants receive access to professional services that are medically prudent to assure quality and continuity of care. Elder Care will not be required to use any specific amount of services.
- 2.5 Will not create barriers to access to care by imposing requirements on Participants that are inconsistent with the provision of medically necessary Covered Services (e.g., third party liability recovery procedures that delay or prevent care). Subcontractor agrees to cooperate with Elder Care to comply with the applicable Guidelines for Access Standards issued by CMS which appear in Appendix A.
- 2.3 Will seek approval from Elder Care for all services prior to service delivery using the Prior Authorization Form or its successor which appears in Appendix B. Subcontractor will not independently arrange or refer Participants for services.
- 1.0 Will notify Elder Care in case of an Emergency, of emergency treatment measures during the shift in which the Emergency occurs using Elder Care's 24 hour on-call service. In an

Urgent Care situation which requires prompt but not Emergency treatment, Subcontractor will contact Elder Care for authorization of treatment and/or hospitalization using Elder Care's 24 hour on-call service.

III. TERM AND TERMINATION

- 1.1 Term. This Agreement will be effective as of the date signed by both parties and will automatically renew each year.
- 3.2 Termination. This Agreement may be terminated at anytime by mutual agreement of both parties. This Agreement may be terminated at anytime by either party upon sixty (60) days prior written notice to the other party. This Agreement may be terminated immediately if there is any material default in the performance of the terms and conditions of this Agreement which default has not been cured within thirty (30) days following written notice of such default. Elder Care may terminate this Agreement immediately upon written notice if Subcontractor loses its liability insurance coverage, loses Medicare and/or Medicaid certification for services, or pertinent licenses for services rendered under this Agreement. Subcontractor may terminate this Agreement upon thirty (30) days written notice to Elder Care in the event that Elder Care is unable to pay for services rendered under this Agreement. Termination will have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination. Nothing in this Agreement will be construed to limit either party's lawful remedies in the event of a material breach of this Agreement.
- 3.3 Department of Health and Family Services ("DHFS") Approval. This Agreement is subject to approval by DHFS. Under Elder Care's contract with DHFS, DHFS retains the right to modify or void any agreement with a provider. If DHFS requires modification(s) to this Agreement, Subcontractor may accept the modification(s), negotiate new terms satisfactory to DHFS and Elder Care, or declare the Agreement null and void.

IV. COMPENSATION

- 1.0 Services. Elder Care will reimburse Subcontractor according to the terms and conditions of Appendix C.
- 2.0 Coordination of Benefits. Subcontractor shall submit directly to Elder Care all invoices for services rendered to a Participant. Subcontractor agrees to follow Coordination of Benefits ("COB") procedures established by the Wisconsin Office of the Commissioner of Insurance, acknowledging that Elder Care is always the secondary payer in circumstances where a Participant is covered by a third-party payer. If Elder Care is not primary in a COB situation, Subcontractor will bill other primary third-party payers first; in the event that the primary payer denies the claim or makes only a partial payment on the claim, Subcontractor will submit invoices to Elder Care within forty-five (45) days of receiving the primary payer's denial or partial payment.
- 3.0 Hold-Harmless. The payments by Elder Care and/or any third party payer will be the sole compensation for services rendered under this Agreement. Subcontractor agrees not to bill Participants and to hold harmless individual Participants, DHFS, and CMS in the event Elder Care cannot pay for services. In the event a Participant agrees to pay prior to service delivery and documents the consent in writing, Participants may be billed for the provision

of non-Covered Services not authorized by the Interdisciplinary Team or the Elder Care Medical Director.

V. BILLING AND CLAIMS

- 2.1 Claims. Subcontractor will directly bill all insurance in effect that is primary to Medicare or Medicaid as provided in Section 4.2. Subcontractor will submit all claims payable by Elder Care under this Agreement in standard industry format acceptable to Medicare and Medicaid to TMG Health, a third party claims processing service. Subcontractor will complete the claims in the same manner required for reimbursement under Medicare and WMP, including but not limited to providing all appropriate procedure codes.
- 2.2 Timeliness of Claims. A completed claim for which Elder Care is the primary payer will be submitted no later than sixty (60) days after the delivery of service.
- 2.3 Timeliness of Payments. Elder Care will make payment to Subcontractor within thirty (30) days of receipt of a properly submitted claim.
- 2.4 Adjustments. All claims will be considered final unless adjustment is requested in writing by Subcontractor within sixty (60) days after receipt of the invoice by Elder Care.
- 2.5 Claim Denial and Appeal Process. In the event that a payment for a rendered service is denied by Elder Care, Subcontractor may submit an appeal to Elder Care. Elder Care will provide a representative to review the invoice with the aggrieved party to discuss the reason for denial and to adjust the payment if appropriate. In the event of any dispute arising from any claim or bill submitted by Subcontractor, each party will have access to all reasonable and necessary documents and records that would, at the discretion of either party, tend to sustain its claim. Patient records will only be released to the extent allowable under Wisconsin and federal law. Elder Care will not be liable for payment for services provided to Participants which have not received the requisite prior approval consistent with Section II (Services) of this Agreement. A copy of Elder Care's Claims Authorization Procedure is available upon request.
- 2.6 Reports. Subcontractor will provide Elder Care with mutually agreed upon periodic reports regarding Participants' utilization based upon billing information collected and maintained by these entities.

I. CERTIFICATION

- 1.0 Certification. Subcontractor shall maintain Medicare and Medicaid certification and appropriate organizational licenses.

If Subcontractor employs Physicians, Subcontractor warrants that each Partnership Primary Care and Specialty Physician is licensed in the State of Wisconsin and board certified or is board-eligible in his/her specialty. Subcontractor warrants that each Primary Care and Specialty Physician is a qualified provider under Medicare and WMP. Subcontractor warrants that all Primary Care and Specialty Physicians providing services under this Agreement will maintain registration with the Drug Enforcement Administration (DEA) and hold a valid DEA number for prescribing purposes. Subcontractor warrants that each Primary Care and Specialty Physician providing services under this Agreement

has a unique physician identification number, as specified in section 1173 (b) of the Social Security Act.

- 2.0 Verification. Credential verification is the review of licenses, diplomas, transcripts, certificates, or other documentation of an individual's qualification to provide services under this Agreement. For licensed health care professionals, the process must verify current eligibility to participate in Medicaid and Medicare programs. For other care workers, such as personal care workers, transportation providers, the process includes the completion of any education or skills training necessary to provide specific services and a criminal background check. Subcontractor agrees to verify individual credentials of health professionals and other service workers employed by Subcontractor who provide services under this Agreement. Subcontractor warrants that it is making the necessary criminal background checks required by Chapter HFS 12 of the Wisconsin Administrative Code and is in compliance with the code governing hiring and contracting.

Credential verification may be conducted by Subcontractor or delegated to an accredited credentialing organization under contract with Subcontractor. Subcontractor agrees to submit a summary of its credential verification process to Elder Care for review no less frequently than every three years. Subcontractor agrees to allow Elder Care to monitor the credential verification process by periodic review, including random spot checks of documentation.

- 3.0 Notification. Subcontractor agrees to notify Elder Care if Subcontractor loses Medicare or Medicaid certification, or organizational or individual professional licensure for any of these services, which may constitute a default subject to Section III (Termination).

If Subcontractor employs Physicians, Subcontractor shall promptly notify Elder Care of any termination or suspension of a Primary Care or Specialty Physician's professional license, termination or limitation of staff privileges, change in malpractice insurance coverage, or the imposition of sanctions under Medicare or WMP.

VII. ASSIGNMENT

This agreement cannot be assigned or delegated by Subcontractor without the prior written approval of Elder Care.

VIII. COOPERATION

- 1.0 Cooperation Between the Parties. Elder Care and Subcontractor agree that to the extent compatible with the separate and independent management of each, they will at all times maintain an effective liaison and close cooperation with each other to provide maximum benefits and access to care for Participants at the most reasonable cost consistent with quality standards of patient care.
- 2.0 Quality Assurance and Improvement. Subcontractor agrees to cooperate with Elder Care in its implementation of effective quality assurance and improvement programs, subject to state and federal laws applying to access to records. Subcontractor agrees to cooperate in this process and allow access to appropriate records in Elder Care's conduct of oversights and review. Subcontractor agrees to cooperate with DHFS in its quality assurance oversight activities, including assisting DHFS and/or any reviewing bodies under contract

with DHFS as needed in identification of Subcontractor and Participant data required to carry out on-site medical chart review. Subcontractor agrees to provide services in accordance with the services authorized by Elder Care through the Elder Care Interdisciplinary Team, and submit reports as required by Elder Care.

- 3.0 DHFS and CMS Requirements. Subcontractor understands that the Partnership program is a demonstration program offered through the Medicare and Medicaid programs. As a participant in this program, Elder Care is subject to contractual obligations with DHFS and CMS. Subcontractor has reviewed DHFS's contract requirements for Elder Care's subcontracts attached as Appendix D of this Agreement and agrees to fully assist Elder Care in compliance with the terms and conditions of Elder Care's contracts with DHFS and CMS. Subject to its right to terminate this Agreement pursuant to Section III, Subcontractor will also cooperate with Elder Care in complying with any amendments or additional requirements for Partnership providers.

IX. GRIEVANCES AND APPEALS

Subcontractor agrees to cooperate and upon request to furnish all relevant information to Elder Care, DHFS and CMS in resolving any Participant's grievance or appeal related to the provision of services. Subcontractor agrees to forward to Elder Care medical records pursuant to grievances or appeals, within fifteen (15) working days of Elder Care's request, or immediately if the grievance or appeal is expedited. If Subcontractor does not meet the fifteen (15) day requirement, Subcontractor will explain reason(s) for the delay and indicate when the medical records will be delivered. Subcontractor agrees to comply with Elder Care's adjudication process for any Participant's grievance or appeal. This procedure allows Participants to appeal any negative response to the Grievance Committee or to the Elder Care Board of Directors. A copy of the Participant Grievance Handout is available upon request.

X. DISPUTES

In the event that any dispute shall arise with regard to the performance or interpretation of any of the terms of this Agreement, or if either party claims that the other party has breached this Agreement, both parties agree to resolve disputes by meeting or teleconference within sixty (60) days of the date such dispute was brought to the attention of one party by the other party. In the event that the parties are unable to reach a resolution of the dispute, either party may give the other party written notice of its intent to terminate this Agreement in accordance with Section 3.2: Termination.

XI. INSURANCE AND INDEMNIFICATION

- 1.0 Insurance. Subcontractor shall secure and maintain at its expense throughout the term of this Agreement such policy or policies of general liability and professional liability (malpractice insurance) as shall be necessary to insure Subcontractor, its employees, its agents, and contracted health care providers against any claims for damages arising by personal injury or death, occasioned directly or indirectly in connection with the performance of any services by said health care provider. Coverage limits shall be at least in the amount specified in § 655.23(4) of the Wisconsin Statutes. Subcontractor will give thirty (30) days notice of termination of insurance. Upon entering into this Agreement, Subcontractor will provide Elder Care with a Certificate of Insurance to confirm compliance with this Section XI. Prior to the modification, expiration and/or cancellation

of insurance coverage, Subcontractor will secure replacement coverage and provide Elder Care with a Certificate of Insurance.

- 2.0 Notice of Potential Complaint or Grievance. Elder Care will promptly advise Subcontractor in the event it has reason to believe a complaint or grievance may exist against Subcontractor for services performed under this Agreement. Notification under this section will be for information purposes only and will not substitute for the statutory notification and claim procedure of Section 893, Wisconsin Statutes.
- 3.0 Indemnification. Subcontractor agrees to indemnify and hold harmless Elder Care and its directors, officers, agents, volunteers and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses, including actual attorneys' fees, in whole or in part resulting from, arising from, or in any way connected with the acts, errors or omissions, including the dishonest, fraudulent or criminal acts of Subcontractor or its directors, officers, agents, representatives or employees, whether acting alone or in collusion with others in connection with the performance of their obligations under this Agreement. Elder Care agrees to indemnify and hold harmless Subcontractor and its directors, officers, agents, volunteers and employees against any and all claims, lawsuits, settlements, judgments, resulting from the acts, errors or omissions, including the dishonest, fraudulent or criminal acts of Elder Care or its directors, officers, agents, representatives or employees, whether acting alone or in collusion with others in connection with the performance of Elder Care's obligations under this Agreement.

I. EXCLUSION FROM STATE AND LOCAL HEALTH CARE PROGRAMS

Both parties represent and warrant that Subcontractor and Elder Care and their owners and employees are not excluded from participation in any Federal health care programs, as defined under 42U.S.C.11320a-7b(f), or any form of state Medicaid program, and to each party's knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. Each party agrees to notify the other party of the commencement or any such exclusion or investigation within seven (7) business days of first learning of it. Both parties have the right to immediately terminate this Agreement upon learning of any such exclusion and shall be kept apprised by the other party of the status of any such investigation.

XIII. NONDISCRIMINATION/CIVIL RIGHTS COMPLIANCE/LIMITED ENGLISH PROFICIENCY

In connection with the performance of work under this contract, both parties agree to comply with applicable federal and state laws regarding nondiscrimination and equal employment opportunities including the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101, et seq., and the regulations promulgated thereunder. Both parties agree not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, gender, physical condition, developmental disability as defined in § 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Both parties further agree to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

As a subcontracted provider of Elder Care, Subcontractor understands that he must be in compliance with the equal opportunity policy and standards for the Department of Workforce Development (DWD), Department of Health and Family Services (DHFS) and all applicable state and federal statutes and regulations relating to nondiscrimination in employment and service delivery. Subcontractor also understands that it is required to provide equality opportunity for Participants with Limited English Proficiency (“LEP”) and provide language access services to populations of persons with LEP who are eligible to be served by Subcontractor. Subcontractor shall submit a two-year Civil Rights Compliance and LEP plan to Elder Care for review and approval. Subcontractor must use the Civil Rights Compliance Plan template developed by DWD and DHFS, which is located at http://www.dwd.state.wi.us/dws/manuals/pdf/crc_manual.pdf. The plan must be submitted within 60 days from the effective date of this Agreement.

Subcontractors with fewer than 25 employees or that receive less than \$25,000 in funding from Elder Care may submit a letter of assurance that contains their Civil Rights Compliance and LEP policies in lieu of a Civil Rights Compliance and LEP plan (Appendix E).

Subcontractor understands that complaints of Participants or applicants related to civil rights compliance must be reported to Elder Care and will be investigated by Subcontractor and Elder Care.

I. SUBROGATION

State subrogation rights have been extended to Elder Care under s.49.54(9), Act 31, Laws of 1989. Elder Care is obligated to collect all moneys for out-of-pocket expenses flowing from personal injury, medical malpractice, product liability, Workers’ Compensation on behalf of its Participants. “Out-of-pocket expenses” include moneys paid by Elder Care for the Participant for all services related to the injury, not limited to health care expenses. Subcontractor agrees to cooperate with Elder Care on all subrogation matters including but not limited to notifying Elder Care within twenty-four (24) hours of an incident, and forwarding to Elder Care copies of all documents and reports pertaining to the incident as they become available.

XV. RECORDS

1.0 Maintenance of Records. Subcontractor will maintain books and records pertaining to this Agreement in a form consistent and in compliance with confidentiality provisions of applicable federal and state laws and Medicaid and Medicare regulations. Subcontractor agrees to preserve the full confidentiality of medical records and protect from unauthorized disclosure all information, records, and data collected under this Agreement. Access to this information shall be limited to persons who, or agencies which, require the information in order to perform their duties related to Elder Care’s contract with DHFS, including CMS and such others as required by DHFS. Participants and their authorized representatives shall have access to their medical records upon reasonable notice and in accordance with applicable law, including but not limited to, Wisconsin Statutes.

Subcontractor will forward to Elder Care medical records pursuant to appeals within fifteen (15) working days of the record request, or immediately, if the appeal is expedited. If the subcontractor does not meet the fifteen (15) day requirement, the subcontractor must explain reason(s) for the delay and indicate when the subcontractor will deliver the required medical records.

- 15.2 Access to Records. Subcontractor will allow duly authorized agents or representatives of Elder Care, the state or federal government including the Department of Health and Human Services, the Comptroller General, or their designees, during normal business hours, access to its premises to inspect, audit, monitor, copy or otherwise evaluate the performance of Subcontractor's contractual activities and will forthwith produce all records requested as part of such an audit or review. Such access shall include the right to reproduce all such records and material and to verify reports furnished in compliance with the provisions of Elder Care's contract with DHFS. In the event that the right of access is requested under this section, Subcontractor will, upon request, provide and make available staff to assist in the audit or inspection effort, and provide adequate space on the premises to reasonably accommodate the state or federal personnel conducting the audit or inspection effort. Subcontractor agrees to comply with any requirements issued by DHFS as a result of such inspection or audit. All inspections or audits will be conducted in a manner as will not unduly interfere with the performance of Subcontractor's activities. All information obtained during an audit or review will be treated as confidential.
- 1.0 Permission for Governmental Review of the Records Related to this Agreement. Upon written request by the Secretary of Health and Human Services or Comptroller General of the United States, or by any of the Secretary's or Comptroller General's duly authorized representatives, Subcontractor will make available those contracts, books, documents or records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available up to six (6) years after the rendering of such services. If Subcontractor carries out any of the duties of this Agreement through a subcontract with a value of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related individual or organization, Subcontractor agrees to include this requirement in any subcontract. This section is included pursuant to and is governed by the requirements of Sec. 1861(v)(1) of the Social Security Act as amended, 42 U.S.C. § 1395x(v)(1), and the regulations promulgated thereunder.
- 2.0 Record copying fees. Subcontractor will copy and provide Participant records for Elder Care, as requested, to provide continuity of health care. Subcontractor will not seek reimbursement from Elder Care for medical record copies.

XVI. CONFIDENTIALITY OF PROPRIETARY INFORMATION

Elder Care and Subcontractor agree that performance of this contract will result in employees' access to confidential information. Such information may include but not be limited to Participant medical records, staff compensation, and certain proprietary and management information concerning both organizations. Both Elder Care and Subcontractor agree that any employees assigned to perform services or who otherwise have access to such information will be made aware of the confidential nature of such information. Subcontractor agrees to comply with applicable federal and state rules and regulations including but not limited to those promulgated from the Health Insurance Portability and Accountability Act of 1996.

XVII. INDEPENDENT CONTRACTOR

The relationship between Subcontractor and Elder Care under this Agreement will be construed and deemed to be between independent contractors and for the sole purpose of carrying out the terms of this Agreement. Nothing in this Agreement will be construed to create a partnership, joint venture, employer-employee or principal-agent relationship between the parties, nor will the

parties hold themselves out as being a partnership, joint venture, employer-employee or principal-agent relationship. As between Elder Care and Subcontractor, each has full, complete, absolute and sole authority and responsibility regarding its own operations; and none shall have any direction or control over the manner in which any other performs its obligations.

I. OSHA REQUIREMENTS

Subcontractor agrees to require its employees to comply with all applicable OSHA requirements.

II. COMPUTER MALFUNCTION CONGECENCY PLANS

Subcontractor warrants that he has a contingency plan to ensure its ability to meet its contract obligations in the event that Subcontractor or its vendors experience any type of computer malfunction, including data changes, that may affect mission-critical systems.

XX. ADVERTISING

Elder Care and Subcontractor agree to provide and obtain, in advance, the other party's written approval of all advertising and promotional materials, both written and broadcast, which refer to the other party. No reference of the other party shall be made in any materials unless prior written approval is obtained. Consent shall be deemed given if not received in thirty (30) working days from the date of the request.

XXI. NONEXCLUSIVITY

The parties enter into this Agreement on a nonexclusive basis.

XXII. NOTICE

Any notice, demand or communication required, permitted or desired to be given under this Agreement will be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed as follows:

Elder Care of Wisconsin, Inc.:
Manager, Provider Services

2802 International Lane
Madison, WI 53704

<Subcontractor>
Address

XXIII. MISCELLANEOUS

23.1 Entire Agreement: This Agreement contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect.

- 23.2 Modifications: This Agreement constitutes the entire understanding between the parties hereto, and no changes, amendments, or alterations shall be effective unless agreed to in writing by both parties. Notice to or consent of Elder Care Participants shall not be required to effect any modifications to this Agreement.
- 23.3 Invalidity or Nonenforceability: The invalidity or nonenforceability of any terms or provisions hereof shall in no way affect the validity or enforceability of any other term or provision.
- 23.4 Enforcement: This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin. Unless waived by both parties, venue for any action to enforce or interpret the provisions of this Agreement shall be in Dane County, Wisconsin. This section is subject to Wisconsin Statute 788.02 to permit disputes to be resolved in accordance with Section X.

IN WITNESS WHEREOF, the undersigned concur with the terms, conditions and understandings as set forth in this Agreement and have executed the Agreement as of the date and year first written above:

ELDER CARE OF WISCONSIN, INC.

<SUBCONTRACTOR>

By: _____
Vice President of Health Plan Operations

By: _____

Date: _____

Date: _____

MA # _____

MC # _____

APPENDIX A

CMS GUIDELINES FOR ACCESS STANDARDS

The Center for Medicare/Medicaid Services has issued the following Access Standards. Subcontractor shall comply with these standards to the extent they are applicable to Subcontractor's provision of services.

A. POLICY

Contractors shall provide available, accessible, and adequate numbers of institutional facilities, service locations, service sites, professional, allied, and paramedical personnel for the provision of all covered services on an emergency basis, 24-hour-a-day, and seven-day-a-week basis. DHFS is invited to propose specific access measures designed for frail elderly and for beneficiaries with physical disabilities, however, at a minimum, shall include:

B. PROCEDURES

1. Travel Time/Distance

Time/Distance to Primary Care and Hospitals. DHFS shall demonstrate that provider networks are in place which guarantee all clients in urban or suburban locations access to primary care sites and hospitals within thirty (30) minutes or thirty (30) miles of their residence. Transport time and distance in rural areas to primary care sites and hospital may be greater than thirty (30) minutes or thirty (30) miles if based on the community standard for accessing care. Where greater, the exceptions must be justified and documented on the basis of community standards. This information must be made available for review upon CMS's request.

Time/Distance to Specialty Care Locations. Travel time/distances to all types of specialty care, including mental health, pharmacy, general optometry, lab and x-ray services, and long-term care services shall not exceed thirty (30) minutes or thirty (30) miles from the participant's residence. DHFS may exempt individuals who request to receive services from a specialty provider with whom they have an established relationship but the travel time or distance is greater than thirty (30) minutes or thirty (30) miles.

2. Appointment Times. Partnership organizations shall employ sufficient medical personnel and staff to be able to meet basic standards in the scheduling of appointments for their participants. Appointments must be available for eligible recipients in accordance with the usual and customary practice standards and hours of operation. (Note: "Usual and customary" means access that is equal to or greater than the currently existing practice in the fee for service system.)

Maximum expected waiting times shall be as follows:

Emergency Care. Emergency care must be provided as the situation dictates. In general, emergency care must be given in accordance to the time frame dictated by the nature of the emergency, at the nearest available facility, twenty-four hours a day, seven days a week, regardless of contracts.

Urgent Care. Triage and appropriate treatment shall be provided on the same or next day.

Non-Urgent Problems and Routine Primary Care. Appointments for non-urgent care and routine primary care shall be provided within three weeks of participant request.

Specialty Care. Referral appointments to specialists, except for specialists providing mental health and substance abuse services (e.g., specialty physician services, hospice care, home health care, and certain rehabilitation services, etc.) shall not exceed thirty (30) days for routine care or forty eight (48) hours for urgent care. All emergency care must be provided on an immediate basis, at the nearest facility available, regardless of contracting arrangements.

General Optometry Services. Partnership organizations must have a system in place to document compliance with the following appointment scheduling time frames. DHFS shall monitor compliance with appointment/waiting time standards as part of the required surveys and monitoring requirements.

Transport Time. Transport time will be the usual and customary, not to exceed one hour, except in areas where community access standards and documentation will apply.

Appointment/Waiting Time: Usual and customary not to exceed thirty (30) days for regular appointments and forty eight (48) hours for urgent care.

Pharmacy Services. Partnership organizations must have a system in place to document compliance with the following appointment scheduling time frames. DHFS shall monitor compliance with appointment/waiting time standards as part of the required surveys and monitoring requirements.

Transport Time. Transport time will be the usual and customary, not to exceed one hour, except in areas where community access standards and documentation will apply.

Lab and X-Ray Services. Partnership organizations must have a system in place to document compliance with the following appointment scheduling time frames. DHFS shall monitor compliance with appointment/waiting time standards as part of the required surveys and monitoring requirements.

Transport Time. Transport time will be the usual and customary, not to exceed one hour, except in areas where community access standards and documentation will apply.

Appointment/Waiting Time: Usual and customary not to exceed thirty (30) days for regular appointments and forty eight (48) hours for urgent care.

All other services not specified here shall meet the usual and customary standards for the community.

3. In-Office Waiting Times. Participants with appointments shall not routinely be made to wait longer than one hour.

4. Patient Load. DHFS shall determine the ratio of participants to primary care physicians.

5. Documentation/Tracking Requirements.

Documentation. Partnership organizations must have a system in place to document appointment scheduling times. Wisconsin must utilize statistically valid sampling methods for monitoring compliance with appointment/waiting time standards as part of the required beneficiary survey and reported to the Department on an annual basis.

Tracking. Partnership organizations must have a system in place to document the exchange of client information with the primary care provider if a school-based health center, not serving as the primary care provider, provides health care.

6. Corrective Action Plan. CMS requires DHFS to have a corrective action plan for Partnership organizations that score less than 70% (or below the benchmarks established by DHFS) in beneficiary satisfaction. DHFS will monitor the plan.

APPENDIX B
PRIOR AUTHORIZATION FORMS

APPENDIX C

COMPENSATION

C.1 For Participants for whom Elder Care receives a monthly Medicare and Medicaid capitation payment, Elder Care agrees to reimburse Subcontractor in the following manner:

- a. Medicare Covered Services. Elder Care will reimburse Subcontractor for services qualifying as Medicare-Covered services that have received prior approval from Elder Care at the Medicare-stated percentage of the Medicare maximum allowable rate. The percentage paid and the maximum allowable rate will be those in effect at the time the service is provided. Elder Care will reimburse Subcontractor any additional payment that the WMP would routinely make after the Medicare payment.
- b. Medicaid Covered Services. For Medicaid Covered services that have received prior approval from Elder Care, Elder Care agrees to reimburse Subcontractor at the WMP rate in effect at the time the service is provided.

C.2. For Participants for whom Elder Care receives a monthly Medicaid capitation payment only, Elder Care agrees to reimburse Subcontractor in the following manner:

For Medicaid Covered services that have received prior approval from Elder Care, Elder Care agrees to reimburse Subcontractor at the WMP rate in effect at the time the service is provided.

C3. For all Participants:

- a. Unlisted Service or Procedure, and Special Reports: Subcontractor and Elder Care must mutually agree upon reimbursement rates for any unlisted service or procedure, and any special reports prior to service delivery.
- b. Non-Medicaid Covered Services. For non-Medicaid Covered Services, or for services with no listed WMP rate that have received prior approval from Elder Care, Elder Care will reimburse Subcontractor at sixty-five percent (65%) of billed charges.

APPENDIX D

DHFS CONTRACT REQUIREMENTS FOR SUBCONTRACTS WITH ELDER CARE

DHFS's subcontract review will assure that Elder Care has the following standard language in subcontracts (except for specific provisions that are inapplicable in a specific Elder Care management subcontract).

1. General Conditions. <Name of subcontractor>(hereafter identified as subcontractor) agrees to abide by all applicable provisions of Elder Care's contract with the Department, hereafter referred to as Elder Care contract. Subcontractor compliance with Elder Care contract specifically includes but is not limited to the following requirements.

2. Required Provisions. The Subcontract agrees:

Certification. To use only MA-certified providers in accordance with Article V, C, Assuring Services of Qualified Providers.

Liabilities. The terms of this subcontract shall not terminate legal liability of Elder Care under the contract with the Department.

QA/QI. To participate and contribute data to Elder Care's QA programs as required.

Emergency Services. To provide timely emergency and urgent care. Where applicable, subcontractor agrees to follow required hospital/emergency room procedures for urgent and emergency care cases.

Reporting. To submit utilization data in the format specified by Elder Care in order to meet the Department specifications.

Records – Retention. To comply with all record retention requirements.

Records – Access. To provide representatives of Elder Care, as well as duly authorized agents or representatives of the Department and CMS, access to its premises and its contract and/or medical records.

Records – Confidentiality. To preserve the full confidentiality of medical records and protect from unauthorized disclosure all information, records, and data collected under the Contract. Access to this information shall be limited to persons who, or agencies which, require the information in order to perform their duties related to this Contract, including CMS and such others as required by the Department.

Records-Maintenance and Transfer. To maintain and transfer medical records as stipulated by Elder Care contract and to make medical records available to members and their authorized representatives within a period not to exceed thirty (30) days if the records are maintained on site and sixty (60) days if maintained off site. 45 CFR 164.524(3)(b)(2)

Records-Complaints. To forward to Elder Care medical records pursuant to appeals within fifteen

(15) working days of the request or, immediately, if the appeal is expedited. If the subcontractor does not meet the fifteen (15) day requirement, the subcontractor must explain reason(s) for the delay and indicate when the subcontractor will deliver the required medical records.

Complaints and Appeals. To inform providers (hospitals, clinics, individual physicians), in Elder Care's network about the complaint/appeal procedures and rights of Elder Care member.

Access. Not to impose requirements on recipients that are inconsistent with the provision of medically necessary and covered Medicaid and Medicare benefits (e.g. TPL recovery procedures that delay or prevent care) and that create barriers to access to care.

Member Protection. To ensure that all contractual or other written arrangements with providers prohibit Elder Care providers from holding any beneficiary member liable for payment of any fees that are the legal obligation of Elder Care as per:

*42 CFR 422.502(q)(1)(i) Contract Provisions between the M+C and CMS

*1903(m)(L)(A)(ii) of the SSA – Contract Provisions, Beneficiary Financial Protection

Non-Discrimination. To comply with all non-discrimination requirements in Elder Care Contract in accordance with the Americans with Disabilities P.L. 101-336 and Americans with Disabilities Act 1990, 42 USC Section 1210.

Referral. To clearly specify referral approval requirements to its providers and in any sub-contracts.

Billing. Not to bill a Medicaid and Medicare member for medically necessary services covered under Elder Care contract. This provision shall continue to be in effect even if Elder Care becomes insolvent. However, if an enrollee agrees in writing to pay for a non-MA or non-Medicare covered service, then Elder Care, the Elder Care provider, or the Elder Care subcontractor can bill the member. Subcontractor also agrees not to bill enrollees for any missed appointments while members are enrolled in WPP.

Marketing. To abide by Elder Care's marketing/informing requirements. Subcontractor will forward to Elder Care for prior approval all flyers, brochures, letters, and pamphlets the subcontractor intends to distribute to its WPP enrollees concerning its managed care affiliation(s), changes in affiliation, or relates directly to the Partnership population. Subcontractor will not distribute any "marketing" or recipient informing materials without the consent of the Elder Care and the Department.

Non-Payment – Appeals. To abide by the terms of Elder Care contract regarding appeals for non-payment of services.

APPENDIX E

DEPARTMENT OF WORKFORCE DEVELOPMENT and DEPARTMENT OF HEALTH AND FAMILY SERVICES

CIVIL RIGHTS COMPLIANCE ASSURANCES

As a condition of funding under this contract, _____
_____ (Recipient/Sub-recipient name and address) provides the following assurances:

(1) Services will be provided without discrimination in compliance with: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Health Service Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981, and the Americans with Disabilities Act (ADA) of 1990.

No otherwise qualified person, shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of age, race, color, disability, association with a person with a disability, gender, creed or religion, arrest or conviction, national origin, ancestry, political belief or affiliation. This policy covers eligibility for and access to service delivery and treatment in all programs and activities.

If staff who are able to converse with a deaf or hard of hearing person in American Sign Language (ASL) is not available, _____ (Recipient/Sub-recipient name) will provide nationally-certified or Wisconsin Interpreting and Transliterating Assessment (WITA)-verified sign language interpreters to assist deaf and hard of hearing applicants. These persons will also offer other options for effective communication (such as using FM radio stations and real-time captioning) to deaf and hard of hearing clients who do not use ASL in order to provide equal access.

Provide LEP applicants/participants written notice of their right to receive oral interpretation free of charge, written material in their primary language.

Provide translation of all written materials for each LEP group of 10% or 3,000, whichever is less, of the population eligible to be served or likely to be directly affected by programs in the service area.

Provide translation of vital documents, for each eligible LEP group that constitutes at least 5% or 1,000 individuals, whichever is less, for the population eligible to be served or likely to be directly affected by programs in the service area. Vital documents are paper or electronic documents that contain information that is critical for accessing the provider/Subcontractor services and/or benefits, or is required by law. They include, but are not limited to, applications/registrations, consent forms, letters containing information regarding eligibility or participation criteria, and notices pertaining to the approval, reduction, denial or termination of services or benefits, that require a response from beneficiaries, and/or that advise of free language access.

You will translate any document in the primary language of an applicant/participant upon request and free of charge.

Staff will receive training on the Civil Rights Compliance Standards as well as cultural competence

training as it relates to working with persons with disabilities, and other protected status groups covered by these standards.

Programs will be made accessible as appropriate in compliance with the Americans with Disabilities Act (ADA). Informational materials will be posted and/or available in languages and formats appropriate to the needs of the population eligible to be served or likely to be directly affected by programs in the service area.

(2) No otherwise qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subjected to discrimination in employment in any manner or term of employment on the basis of age, race, religion, color, sex, national origin or ancestry, disability (as defined in Section 504 and the ADA), or association with a person with disability, physical condition, developmental disability (as defined in s. 51.05 (5), Wis. Stats.), arrest or conviction record (in keeping with s. 111.321, Wis. Stats.), sexual orientation, marital status, or pregnancy, political belief or affiliation, military participation. All employees are expected to support goals and programmatic activities relating to nondiscrimination in employment.

The Equal Opportunity Policy, the name of the Equal Opportunity Coordinator, the name of the Limited English Proficiency Coordinator, and the discrimination complaint process shall be posted in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be according to the Department of Workforce Development and the Department of Health and Family Services standards.

To assist in complying with all applicable equal opportunity rules, regulations and guidelines, I have appointed (Name) _____ (Title) _____, as the Equal Opportunity Coordinator. He or she may be reached on (Days) _____ from (Hours) _____ at (Telephone No.) _____

To assist in complying with all applicable Limited English Proficiency rules, regulations and guidelines, I have appointed (Name) _____ (Title) _____, as the Limited English Proficiency Coordinator. He or she may be reached on (Days) _____ from (Hours) _____ at (Telephone No.) _____

The _____ (Recipient/Sub-recipient) agrees to comply with civil rights monitoring reviews, including the examination of records and relevant files maintained by the Subcontractor, as well as interviews with staff, clients, applicants for services, subcontractors, and referral agencies.

The _____ (Subcontractor) agrees to cooperate with the Department in developing, implementing, and monitoring corrective action plans that result from complaint investigations or other monitoring efforts.

This Civil Right Assurance letter covers the funding period from _____ to _____.

Sincerely,

_____,
(Signature of Executive Director or CEO)

(Title)

(Print Name)

(Date)

Submit to:

DHFS
David Duran
Civil Rights Compliance Officer
DHFS AA/CRC Office
One West Wilson Street, Room 561
P.O. Box 7850
Madison, WI 53707-7850
(608)-266-9372 Voice
(608)-267-2147 Fax
(608)-266-2555 TTY

DWD
Civil Rights Unit
Division of Workforce Solutions
Bureau of Division-Wide Services,
Human Resources Section
201 E. Washington Ave
P.O. Box 7971
Madison, WI 53707

William Franks (608)-266-6889
Ernestine Moss (608)-266-5335
Elayne Moore (608)-264-9820

DWSD-13004-E